
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Request of)
)
CORR WIRELESS COMMUNICATIONS, LLC) WC Docket No. 05-337
)
For Review of a Competitive Eligible) CC Docket No. 96-45
Telecommunications Carrier High-Cost)
Support Decision of the Universal Service)
Administrative Company)

COMMENTS OF RURAL CELLULAR ASSOCIATION
IN SUPPORT OF REQUEST FOR REVIEW

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May 11, 2009

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
BACKGROUND	2
A. The Interim Cap	2
B. The VZW-ALLTEL Adjudication	2
C. The USAC Decision	5
ARGUMENT	6
I. USAC EXCEEDED ITS AUTHORITY AND ACTED UNLAWFULLY WHEN IT EXCLUDED THE VZW/ALLTEL FUNDS FROM THOSE AVAILABLE FOR DISBURSEMENT UNDER THE <i>INTERIM CAP ORDER</i>	6
II. THE CONDITION IMPOSED IN <i>VZW-ALLTEL</i> DID NOT ESTABLISH A RULE OR REGULATION THAT COULD BE ADMINISTERED BY USAC	8
A. The Imposition of the Condition in <i>VZW-ALLTEL</i> Was Inconsistent with the <i>Interim Cap Order</i> Rule	8
B. The Commission Violated the Accardi Doctrine by Requiring <i>VZW/ALLTEL</i> to Phase Down Its High-Cost Support.....	10
C. The Commission Violated the APA in <i>VZW-ALLTEL</i> by Prejudging Matters under Consideration in the Comprehensive Reform Rulemaking	12
III. THE APA AND DUE PROCESS REQUIRE A NOTICE-AND-COMMENT RULEMAKING TO FURTHER REDUCE CETC HIGH-COST SUPPORT.....	14
IV. USAC’S DECISION TO REMOVE THE PHASED-DOWN VZW/ALLTEL SUPPORT FROM THE CETC CAP AMOUNT VIOLATES THE STATUTORY REQUIREMENT THAT SUPPORT BE PREDICTABLE	17
V. CONCLUSION.....	19

SUMMARY

Rural Cellular Association supports the request of Corr Wireless Communications, LLC for review of a decision of the Universal Service Administrative Company (“USAC”) not to include universal service high-cost support funds disclaimed by Cellco Partnership d/b/a Verizon Wireless (“VZW”) and ALLTEL Corporation (“ALLTEL”) in connection with their merger in the pool of funds available for distribution to competitive eligible telecommunications carriers (“CETCs”) under the current interim cap on CETC high-cost support. USAC exceeded its authority by attempting to interpret Commission’s decisions in *High-Cost Universal Support*, 23 FCC Rcd 8834 (2008) (“*Interim Cap Order*”) and *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444 (2008) (“*VZW-ALLTEL*”).

The Commission granted its consent to the VZW-ALLTEL merger, and denied seven petitions to deny filed under § 309(d) of the Communications Act (“Act”), on the condition that VZW honor a “voluntary commitment” to accept a “phase down” of its CETC high-cost support over a five-year period, during which its support would be reduced 20 percent each year. That commitment was made in an *ex parte* presentation during the Sunshine period in a restricted adjudicatory proceeding. VZW’s *ex parte* presentation set forth its “understanding” that the reduction in its support payments “will not result in an increase in high cost payments to other CETCs.” The Commission did not address VZW’s “understanding” in *VZW-ALLTEL*.

In order to function as a federal agency, or exercise decision-making authority, USAC must be specifically authorized to do so by or under a federal statute. USAC has no such authority. Accordingly, USAC may not make policy or interpret unclear provisions of the Commission’s rules (“Rules”). Where the Rules are unclear, or do not address a particular situation, USAC is limited to seeking guidance from the Commission on how to proceed. Under

the *Interim Cap Order*, the amount of high-cost support available to CETCs in a state was set at 12 times the level of support that all CETCs — including VZW and ALLTEL — in the state were eligible to receive in March 2008. Neither the *Interim Cap Order* nor the Rules provide for a further reduction in the funds available to CETCs under the interim cap. USAC overstepped its authority when it decided to exclude the VZW/ALLTEL funds from the pool for distribution to CETCs based on VZW’s “understanding” alluded to in *VZW-ALLTEL*.

The phase down of CETC high-cost support requirement was adopted, and the *Interim Cap Order* rule amended, by a process known as “regulation by condition” which circumvents the Administrative Procedure Act (“APA”). By attaching conditions to its authorizations, the Commission engages in “de facto rulemaking.” The de facto rulemaking in *VZW-ALLTEL* did not establish a rule or regulation that could be administered by USAC.

The *Interim Cap Order* was issued at the conclusion of a notice-and-comment rulemaking conducted pursuant to the APA. Thus, it established a valid legislative rule that was in effect when the Commission acted in *VZW-ALLTEL*. The Commission violated the Accardi doctrine, under which it must respect and enforce the Rules so long as they remain in force, by disregarding its *Interim Cap Order* rule in favor of reducing the level of CETC high-cost support funding beyond the reduction it had found necessary in the interim cap rulemaking.

Having commenced its comprehensive reform rulemaking to consider the option of phasing down CETC high-cost support, the Commission violated APA § 533 by requiring the phase-down in *VZW-ALLTEL* while its rulemaking was ongoing. That violation exemplified the Commission’s practice of enforcing universal service rule changes before they are adopted by rulemaking. The Commission’s prejudgment of an issue pending in the comprehensive reform rulemaking does not establish a rule that can be administered by USAC.

The Commission imposed the interim cap in April 2008 to halt the growth of high-cost support, not to reduce the level of such funding. Under the *Interim Cap Order* rule, the amount of CETC high-cost support that is available in each state is capped at the total amount of support that all CETCs were eligible to receive in that state during March 2008, on an annualized basis. The Commission clearly intended that the amount of CETC high-cost support that would be available would be fixed at the then-current funding level without reduction. It did not contemplate that the per-line high-cost support to any CETC in any state would be reduced unless the number of CETCs in the state increased.

The condition that binds VZW/ALLTEL to accept less high-cost support than it was eligible to receive did not establish a rule that would deprive any other CETC of its right to receive the high-cost support to which it is entitled under the *Interim Cap Order* rule. A CETC cannot be deprived of an entitlement under a federal program without being afforded due process of law. And the process that would be due a CETC would either be a notice-and-comment rulemaking or a suspension or disbarment proceeding. Thus, before it can reduce the amount of per-line high-cost support disbursed to CETCs beyond any reduction called for the *Interim Cap Order* rule, the Commission must conduct an APA rulemaking to amend its existing distribution rules to expressly provide for the further reduction and to authorize USAC to administer the reduction.

The imposition of the interim cap on CETC high-cost support was purportedly consistent with the statutory principle that the USF should be “specific, predictable, and sufficient ... to preserve and advance universal service.” In December 2008, emphasizing the need to “provide certainty regarding the amount of high-cost support available to competitive ETCs under the cap

in each state,” the Commission established a deadline of December 31, 2008 for CETCs to file any “corrections” to “the data on which their March 2008 high-cost support is based.”

By excluding the “phase-down” amounts from the March 2008 cap baseline, USAC is effectively reducing the cap baseline amounts in several states below what CETCs were eligible to receive in March 2008. In setting their capital budgets and planning their build-out activities, CETCs in the impacted states had a reasonable investment-backed expectation that the cap would operate in accordance with the *Interim Cap Order* rule. CETCs in those states now must face still more severe cuts in their support – and they must yet again make adjustments to their budgets and network build-out plans. Thus, the removal of the phase-down amounts out of the March 2008 cap baseline violates the statutory requirement that support to ETCs must be predictable.

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COMMENTS OF RURAL CELLULAR ASSOCIATION
IN SUPPORT OF REQUEST FOR REVIEW

Rural Cellular Association (“RCA”), by its attorneys and pursuant to the Commission’s Public Notice, DA 09-805, released April 9, 2009, hereby submits its comments in support of the request of Corr Wireless Communications, LLC (“Corr”) for review of a decision of the Universal Service Administrative Company (“USAC”) misinterpreting the Commission’s decisions in *High-Cost Universal Support*, 23 FCC Rcd 8834 (2008) (“*Interim Cap Order*”) and *Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC*, 23 FCC Rcd 17444 (2008) (“*VZW-ALLTEL*”).¹ RCA agrees that USAC erred (and exceeded its authority) when it decided not to include universal service high-cost support funds disclaimed by Cellco Partnership d/b/a Verizon Wireless (“VZW”) and ALLTEL Corporation (“ALLTEL”) in connection with their merger in the pool of funds available for distribution to competitive eligible telecommunications carriers (“CETC”) under the *Interim Cap Order*. Because the Corr Appeal presents novel issues of law and policy, it must be referred to the full Commission for consideration. *See* 47 C.F.R. § 54.722(a).

BACKGROUND

¹ *See* Appeal from Decision of Administrator of High Cost Universal Service Fund, CC Docket No. 96-45 (Mar. 25, 2009) (“Corr Appeal”).

A. The Interim Cap

Under the Commission's so-called "identical support rule," for every subscriber line that it serves in the service area of an incumbent local exchange carrier ("ILEC"), a CETC is entitled to receive "the full amount of the universal service support that the [ILEC] would have received for that customer." 47 C.F.R. § 54.307(a)(3). The Commission has not amended or repealed its identical support rule. However, by its *Interim Cap Order*, the Commission capped the high-cost support that CETCs in each state can receive at "twelve times the level of support that all [CETCs] were eligible to receive in that state for the month of March 2008." 23 FCC Rcd at 8850. The cap is to remain in place only until the Commission acts in its rulemaking on comprehensive high-cost universal service support recommendations. *See id.*

USAC was instructed to calculate support under the state-based cap using a two-step approach. *See id.* at 8846. First, USAC was to calculate the support each CETC would receive under the per-line identical support rule and sum those amounts by state. *See Interim Cap Order*, 23 FCC Rcd at 8846. Second, USAC was to calculate a "state reduction factor" to reduce the uncapped support amount. *Id.* To calculate the state reduction factor, the Commission specified:

USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each [CETC] within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.²

B. The VZW-ALLTEL Adjudication

The VZW-ALLTEL merger applications were filed after the *Interim Cap Order* was released but before the cap went into effect. Sixteen petitions to deny the merger applications

² *Interim Cap Order*, 23 FCC Rcd at 8846.

were filed in accordance with § 309(d)(1) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 309(d)(1). *See VZW-ALLTEL*, 23 FCC Rcd at 17455. Seven of the petitioners argued that the Commission should condition its consent to the VZW-ALLTEL merger so as to limit the right of VZW and ALLTEL to receive CETC high-cost support. *See id.* at 17530 & nn.673, 674. Three of these petitioners argued that VZW/ALLTEL should be required to forgo such support entirely. *See id.* at 17530 n.674.

The merger applicants opposed the imposition of such conditions on the grounds that the conditions were not merger-specific and were immaterial. *See id.* at 17531. They also pointed out that the Commission had already imposed an interim cap on all CETC high-cost funding and was considering industry-wide reforms in its comprehensive reform rulemaking. *See id.* The applicants contended that the Commission should not target a high-cost support reform measure only at VZW. *See id.* However, VZW subsequently reached an *ex parte* agreement with the Commission during the Sunshine period under which it reversed its position.

VZW allegedly submitted its so-called “November 3, 2008 *Ex Parte* Letter”³ in response to a question posed by the Commission.⁴ In its letter, VZW addressed the contested issue of whether it should be required to forgo receiving CETC high-cost support. According to the Commission, VZW made a “voluntary commitment” to accept a “phase down” of its CETC high-cost support over a five-year period, during which its support would be reduced 20 percent each year. *See id.* at 17531-32. But VZW stated its “understanding” that the reduction in its support payments “will not result in an increase in high cost payments to other CETCs.” Ex. 1, *infra*, at 1.

³ *VZW-ALLTEL*, 23 FCC Rcd at 17457 n.116.

⁴ *See infra* Ex. 1 at 1 (Letter from John T. Scott, III to Marlene H. Dortch, WT Docket No. 08-95 (Nov. 3, 2008)).

It was no coincidence that VZW's commitment was similar to the five-year phase out of CETC high-cost support that had been proposed by CTIA in an *ex parte* presentation in the Commission's comprehensive high-cost reform rulemaking in WC Docket No. 05-337.⁵ CTIA's proposal was adopted by Chairman Martin and incorporated in the so-called "Alternative Proposal" that he first circulated "on the evening of November 5, 2008."⁶

VZW agreed to phase out its high-cost CETC support on the same day that the Chairman's draft proposal for comprehensive high-cost reform, which had been placed on the Commission's agenda for a vote on November 4, 2008, was removed from the agenda.⁷ Unable to issue a rulemaking decision that addressed the growth in high-cost CETC support, the Commission obviously addressed the matter off-the-record with VZW.

VZW apparently agreed to phase out its CETC high-cost support, and to show support for one of Chairman Martin's proposed high-cost support reforms, as part of a last-minute deal to gain the Commission's approval of the merger at its November 4, 2008 meeting. Sprint Nextel Corporation ("Sprint") also made an *ex parte* presentation on November 3, 2008, by which it offered a "voluntary condition" that was substantively identical to VZW's "voluntary" commitment.⁸ As was the case in *VZW-ALLTEL*, Sprint's "voluntary commitment" led to the prompt grant of its application for Commission consent to its merger with Clearwire Corporation. *Sprint Nextel Corp. and Clearwire Corp.*, 23 FCC Rcd 17570, 17612 (2008) ("*Sprint-Clearwire*").

⁵ See Letter from Paul W. Garnett to Marlene H. Dortch, WC Docket No. 05-337, at 1-2 (Oct. 22, 2008).

⁶ *High-Cost Universal Service Support*, FCC 08-262, at 19, C-9 (Nov. 5, 2008).

⁷ See *Deletion of Agenda Item from November 4, 2008, Open Meeting*, 2008 WL 4791058, at *1 (Nov. 3, 2008).

⁸ See *infra* Ex. 2 at 1 (Letter from Lawrence R. Krevor to Marlene H. Dortch, WT Docket No. 08-94 (Nov. 3, 2008)).

The Commission publicly explained that it felt compelled to condition its consent to the VZW-ALLTEL merger on VZW's commitment to phase down its CETC high-cost support over five years. *See VZW-ALLTEL*, 23 FCC Rcd at 17532. It acknowledged the phase-down was under consideration in its comprehensive reform rulemaking, *see id.*, and that the parties were already subject to the cap imposed by the *Interim Cap Order*. *See VZW-ALLTEL*, 23 FCC Rcd at 17532 n.689. *See also Sprint-Clearwire*, 23 FCC Rcd at 17612 n.289.

The Commission did not address or confirm VZW's "understanding" that the high-cost support it declines would not increase the support disbursed to other CETCs. *See VZW-ALLTEL*, 23 FCC Rcd at 17532. Nor did it address whether the phase down of VZW/ALLTEL's high-cost support would alter the calculation of the state-specific reduction factor under the *Interim Cap Order*. *See id.* *See also Sprint-Clearwire*, 23 FCC Rcd at 17612. Moreover, the Commission did not base its decision to phase down support to VZW/ALLTEL's on the statutory principles set forth in § 254(b) of the Act, 47 U.S.C. § 254(b). *See VZW-ALLTEL*, 23 FCC Rcd at 17532. *See also Sprint-Clearwire*, 23 FCC Rcd at 17612. Finally, the imposition of a condition that was unrelated to the standards for granting transfer of control applications, and was more appropriately considered in a proceeding of general applicability, contradicted the Commission's treatment of other issues decided in *VZW-ALLTEL*.⁹

C. The USAC Decision

In a letter to Corr dated February 25, 2009, USAC represented that *VZW-ALLTEL* did not provide for the reallocation of support to other CETCs when support to VZW/ALLTEL phased

⁹ *See VZW-ALLTEL*, 23 FCC Rcd at 17535-36 ("We agree with the Applicants that this is an inappropriate Commission proceeding to consider the issues raised by EMRPI. Possible revision of the RF standards, which apply broadly across the industry, is not an issue specific to this transaction.")

down.¹⁰ In fact, USAC claimed that VZW-ALLTEL “specifically” stated that the reduction in payments to VZW/ALLTEL would not result in an increase in high-cost support payments to other CETCs.¹¹ USAC announced that the funds not disbursed to VZW/ALLTEL “are effectively removed from the CETC interim cap and do not ‘free up’ additional dollars for other CETCs in any jurisdiction.”¹²

USAC did not state that it had sought guidance from the Commission before it decided to exclude the VZW/ALLTEL funds from the pool of funds available to distribute to other CETCs. And USAC did not explain how its calculation of the state-specific reduction factor adhered to the two-step approach specifically mandated by the *Interim Cap Order*.

ARGUMENT

I. USAC EXCEEDED ITS AUTHORITY AND ACTED UNLAWFULLY WHEN IT EXCLUDED THE VZW/ALLTEL FUNDS FROM THOSE AVAILABLE FOR DISBURSEMENT UNDER THE *INTERIM CAP ORDER*

According to its By-Laws, USAC is a Delaware corporation and a wholly-owned subsidiary of the National Exchange Carrier Association, Inc. (“NECA”).¹³ In order for a corporation to function as a federal agency, or exercise decision-making authority, it must be specifically authorized to do so by or under a federal statute. *See* 31 U.S.C. § 9102; *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 565-68 (D.C. Cir. 2004). In 1998, the Commission asked Congress for specific statutory authority to designate USAC to administer the federal universal service mechanism established under § 254 of the Act. *See Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, 13 FCC Rcd 11810, 11819 (1998). Such

¹⁰ *See infra* Ex. 3 at 1 (Letter from Karen Majcher to Donald J. Evans (Feb. 25, 2009)).

¹¹ *See infra* Ex. 3 at 1.

¹² *Id.*

¹³ *See infra* Ex. 4 at 1 (By-Laws of USAC available at < <http://www.universalservice.org/about/-governance>>).

authorization was not granted by Congress. Nevertheless, the Commission proceeded to exercise its general authority under §§ 4(i) and 254 to designate USAC as the administrator of the universal service program. *See Changes to the Bd. of Directors of NECA*, 13 FCC Rcd 25058, 25065-66 (1998) (“*NECA Changes*”).

The Commission was not authorized by Congress to delegate decision-making authority to USAC. *See id.* at 25131 (dissenting statement of Com’r Furchtgott-Roth).¹⁴ Accordingly, when it designated USAC to be the sole administrator of the universal service support mechanisms, the Commission emphasized that USAC’s function would be “exclusively administrative.” *NECA Change*, 13 FCC Rcd at 25067. The Commission provided:

USAC may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission’s rules are unclear, or do not address a particular situation, USAC must seek guidance from the Commission on how to proceed. Furthermore, USAC may advocate positions before the Commission and the Commission staff only on administrative matters relating to the universal support mechanisms.¹⁵

USAC clearly overstepped whatever lawful authority it has been delegated when it decided to exclude the VZW/ALLTEL funds from the pool for distribution. Under the *Interim Cap Order*, the amount of high-cost support available to CETCs in a state was set at 12 times the level of support that all CETCS — including VZW and ALLTEL — in the state were eligible to receive in March 2008. *See* 23 FCC Rcd at 8850. Neither the Act nor the Commission’s rules (“Rules”) provide for a reduction in the funds available under *Interim Cap Order*. Neither do

¹⁴ The Commission relied on § 2005(b) of S. 1768, a supplemental appropriations bill adopted by the Senate in 1998. *See NECA Changes*, 13 FCC Rcd at 25062 n.14, 25066 nn.40, 41, 25067 n.45. However, § 2005(b) was not included in H.R. 3579, the emergency supplemental appropriation bill that was passed by Congress, having been eliminated in conference committee. *See id.* at 25062 n.14. The Conference Report expressly stated that its action should not be considered as expressing the approval of Congress of the Commission’s action in establishing one or more corporations to administer § 254(h) of the Act. *See* H.R. Rep. No. 105-504, at 87 (1998).

¹⁵ *NECA Changes*, 13 FCC Rcd at 25067 (footnotes omitted). *See* 47 C.F.R. § 54.702(c), (d).

they address the situation where a CETC agrees to phase out its high-cost support. Consequently, under § 54.702 of the Rules, USAC was without authority to do more than “seek guidance from the Commission.” 47 C.F.R. § 54.702(c). However, even if USAC informally sought Commission guidance before it acted, that effort would have been futile.

The Commission has not amended or repealed its *Interim Cap Order* to specify that undistributed funds cannot be reallocated to other CETCs under the interim cap. Nor has the Commission adopted a rule, or established an enforceable policy, that applies when a CETC declines high-cost support. Under the circumstances, USAC could not simply seek Commission “guidance.” USAC was required to request a formal Commission ruling on how the VZW/ALLTEL funds were to be treated under the *Interim Cap Order*. USAC violated § 54.702(c) of the Rules, and acted unlawfully, when it excluded those funds from the pool of funds available to distribute to the CETCs that remained entitled to high-cost support.¹⁶

II. THE CONDITION IMPOSED IN VZW-ALLTEL DID NOT ESTABLISH A RULE OR REGULATION THAT COULD BE ADMINISTERED BY USAC

A. The Imposition of the Condition in VZW-ALLTEL Was Inconsistent with the *Interim Cap Order* Rule

At the conclusion of its interim cap rulemaking, the Commission took the action it deemed necessary to “halt the rapid growth of high-cost support that threatens the sustainability of the [USF].” *Interim Cap Order*, 23 FCC Rcd at 8837. It adopted an “interim, limited cap” on CETC high-cost support in order to avert a purported “crisis” that could “cripple” the USF. *Id.* The Commission imposed a state-based cap that would “stabilize” CETC high-cost support, *id.*

¹⁶ RCA agrees with Corr that any other disclaimed CETC high-cost support funds (such as the support that Sprint/Clearwire is eligible to receive but declined) must be included in the pool of funds available for disbursement in accordance with the *Interim Cap Order*. See Corr Appeal at 6. USAC should disburse such funds to CETCs effective for all quarters after December 31, 2008. See *id.*

at 8845, and make it “more predictable.” *Id.* at 8841. The predictable CETC high-cost support “distribution” rule adopted by the Commission qualified as a “rule” under the Administrative Procedure Act (“APA”) since it was to have “particular applicability and future effect” and was designed to “prescribe law or policy.” 5 U.S.C. § 551(4).

In its *Interim Cap Order*, the Commission did not disturb its identical support rule, which still provides that a CETC “shall receive” USF support to the extent it captures the subscriber lines of an ILEC or serves new subscribers in the ILEC’s service area. 47 C.F.R. § 54.703(a). However, in states where uncapped support exceeded the “available state cap support amount,” CETCs were to have their high-cost support reduced by a state reduction factor calculated by dividing the available state cap support amount by the total support CETCs in the state “would have received under the existing (uncapped) per-line identical support rule.” *Interim Cap Order*, 23 FCC Rcd at 8846. Thus, under the CETC high-cost distribution rule promulgated by the *Interim Cap Order*, every CETC in a state was to receive high-cost support — including VZW and ALLTEL — and any state reduction factor was to be calculated using the total support that all CETCs in the state — including VZW and ALLTEL — would have received under the identical support rule.

The Commission promised that its interim CETC high-cost support distribution rule would “remain in place” until comprehensive, high-cost universal service reform was adopted. *Interim Cap Order*, 23 FCC Rcd at 8845. As it turned out, the rule only remained in place three months before it was abandoned by the Commission when it adopted the phase out of CETC support requirement in *VZW-ALLTEL* and *Sprint-Clearwire*. By imposing the phase-down requirement on the wireless carrier that is the nation’s largest in terms of revenues and customers and the largest recipient of CETC high-cost support, *see VZW-ALLTEL*, 23 FCC Rcd at 17532,

the Commission introduced uncertainty by providing that CETC high-cost support would not be distributed in accordance with its just-promulgated *Interim Cap Order* rule.

The phase down of CETC high-cost support requirement was adopted, and the *Interim Cap Order* rule amended, by a process known as “regulation by condition” which circumvents the APA.¹⁷ By attaching conditions to its authorizations, the Commission engages in “de facto rulemaking.”¹⁸ The de facto rulemaking in *VZW-ALLTEL* and *Sprint-Clearwire* necessarily violated both the Commission’s identical support rule and *Interim Cap Order* rule, which entitle every CETC to receive the full amount of support from the federal universal service fund (“USF”) that the ILEC would have received on a per-line basis subject only to the interim cap on high-cost support. By the imposition of the conditions in *VZW-ALLTEL* and *Sprint-Clearwire*, the Commission deprived all CETCs of their statutory right to receive “[s]pecific and predictable” USF support that is sufficient “to preserve and advance universal service.” 47 U.S.C. § 254(b)(5). Consequently, the Commission’s actions were unlawful on two grounds.¹⁹

B. The Commission Violated the Accardi Doctrine by Requiring VZW/ALLTEL to Phase Down Its High-Cost Support

The Commission ran afoul of the *Accardi* doctrine²⁰ under which a federal agency must

¹⁷ It is common for the Commission to negotiate “commitments from merging parties to comply with all sorts of regulatory mandates that the FCC will not or cannot (for jurisdictional or statutory reasons) promulgate in the form of rules generally applicable to all.” Peter W. Huber, Michael K. Kellogg & John Thorne, *Federal Telecommunications Law* § 7.3.4, at 609-10 (2d ed. 1999). That “backdoor regulatory tool gives the FCC almost unlimited — though little noted — power to regulate as it pleases, outside the ambit of [APA] process and judicial review.” *Id.*

¹⁸ *Id.* at 610.

¹⁹ RCA will address *VZW-ALLTEL* primarily because that was the decision relied on by USAC. *See infra* Ex. 3 at 1-2.

²⁰ *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954) and its progeny. As applied to the FCC, the *Accardi* principle that “agencies must abide by their rules” was expressed as a “precept that lies at the foundation of the modern administrative state.” *Reuters Ltd. v. FCC*, 781 F.2d 946, 947 (D.C. Cir. 1986).

respect and enforce its own rules so long as they remain in force. *See United States v. Nixon*, 418 U.S. 683, 695-96 (1974). “Thus, unless and until it amends or repeals a valid legislative rule or regulation, an agency is bound by such a rule or regulation.” *American Federation of Government Employees v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985). The *Interim Cap Order* rule was promulgated in notice-and-comment rulemaking conducted pursuant to the APA. Thus, it was a valid legislative rule that was in effect when the Commission acted in *VZW-ALLTEL* and *Sprint-Clearwire*.²¹ The Commission violated the *Accardi* doctrine by disregarding its rule in favor of reducing the level of CETC high-cost support funding beyond the reduction it had found necessary to sustain the USF in the interim cap rulemaking.

As a properly-promulgated legislative rule, the *Interim Cap Order* rule had the “binding force of law.” *Kelley v. EPA*, 15 F.3d 1100, 1108 (D.C. Cir. 1994). In its quasi-judicial role as an adjudicator, the Commission was under the obligation to decide whether to approve the *VZW-ALLTEL* merger “under the law currently applicable.” *AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992), *cert. denied*, 509 U.S. 913 (1993). Bound by its just-adopted CETC high-cost distribution rule, the Commission was without authority to impose a condition in *VZW-ALLTEL* that was contrary to the law as set forth in its *Interim Cap Order* rule. *See id.* at 735.²²

C. The Commission Violated the APA in *VZW-ALLTEL* by Prejudging Matters under Consideration in the Comprehensive Reform Rulemaking

The notice-and-comment requirements of § 553 of the APA, 5 U.S.C. § 553, reflect

²¹ The *Interim Cap Order* rule was formally adopted by the Commission in a notice-and-comment rulemaking conducted under authority delegated it by §§ 4, 201, and 254 of the Act. *See* 23 FCC Rcd at 8851. Thus, it is a legislative or substantive rule. *See Syncor International Corp. v. Shalala*, 127 F.3d 90, 95 (D.C. Cir. 1997) (“a substantive rule modifies or adds to a legal norm based on the agency’s own authority”).

²² The Commission is without authority to impose a condition that is inconsistent with its rules and rulemaking orders. *See* 47 U.S.C. § 303(r) (the Commission can prescribe conditions “not inconsistent with law”).

Congress’ “judgment that ... informed administrative decisionmaking require[s] that agency decisions be made only after affording interested persons” an opportunity to communicate their views to the agency. *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979). The requirements improve the quality of the Commission’s rulemaking by exposing regulations to diverse public comment, ensuring fairness to affected parties, and providing a well-developed record that enhances the quality of judicial review. *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003).

Under APA § 553(c), “adequate notice and opportunity to comment must be provided *before* promulgation of a rule, not after.” *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (emphasis in original). The requirement that parties be able to comment on a rule while it is still in the formative or proposed stage is intended to ensure that “the agency maintains a flexible and open-minded attitude towards its own rules, which might be lost if the agency had already put its credibility on the line in the form of ‘final’ rules.” *National Tour Brokers*, 591 F.2d at 902.

APA § 553(c) obliges the Commission to afford the public a “meaningful opportunity” to comment. *E.g., Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002). That means the Commission must consider the comments “with a mind that is open to persuasion.” *Advocates for Highway and Auto Safety v. Federal Highway Admin.*, 28 F.3d 1288, 1292 (D.C. Cir. 1994). The Commission prejudices a rulemaking in violation of the APA when its actions evidence that it has an “unalterably closed mind on matters critical to the disposition of the proceeding.” *PLMRS Narrowband Corp. v. FCC*, 182 F.3d 995, 1002 (D.C. Cir. 1999). The Commission’s imposition of the phase-down condition in *VZW-ALLTEL* set a precedent that reflects an unalterably closed mind on an issue the Commission explicitly recognized was under

consideration in its “rulemaking on comprehensive high-cost universal service reform.” *VZW-ALLTEL*, 23 FCC Rcd at 17532.

Having commenced its comprehensive reform rulemaking to consider the option of phasing down CETC high-cost support, the Commission violated the APA by requiring the phase-down in *VZW-ALLTEL* while its rulemaking was ongoing. That violation exemplified the Commission’s practice of enforcing universal service rule changes before they are adopted by rulemaking,²³ a practice that is not harmless. By prejudging the rulemaking issue in *VZW-ALLTEL*, the Commission made it evident that it was locked-in to a policy decision to phase out CETC high-cost support.²⁴ That could discourage parties to the comprehensive reform rulemaking from arguing that the identical support rule should be preserved, because they conclude that the decision to phase out the rule is a *fait accompli*. See *National Tour Brokers Ass’n v. United States*, 591 F.2d 896, 902 & n.24 (D.C. Cir. 1978).

Because the *Interim Cap Order* rule was promulgated by means of an APA notice-and-comment rulemaking, the Commission had to employ the same procedure to amend or repeal its rule. See *American Federation*, 777 F.2d at 759. In fact, the Commission announced that the rule would remain in place until it completed its rulemaking on high-cost universal service reform. See *Interim Cap Order*, 23 FCC Rcd at 8845. The Commission violated its commitment

²³ For example, in January 2004, the Commission announced and retroactively applied new ETC eligibility requirements while it was waiting for the Federal State Joint Board on Universal Service to make its recommendations as to those requirements. See *Virginia Cellular, LLC*, 19 F.C.C.R. 1563, 1565 (2004). See also *Highland Cellular, Inc.*, 19 F.C.C.R. 6422, 6423-24 (2004). Fourteen months later, the Commission “adopted” the same requirements in a rulemaking order. See *Federal-State Joint Bd. on Universal Service*, 20 F.C.C.R. 6371 (2005).

²⁴ Research has shown that agencies experience “lock-in” or “resistance to modification of proposed rules during the notice and comment process.” Stephanie Stern, *Cognitive Consistency: Theory Maintenance and Administrative Rulemaking*, 63 U. Pitt. L. Rev. 589, 592 (2002). Stern applied the cognitive consistency theory of psychology to explain the problem of agency lock-in. The theory refers to a bias towards the maintenance of existing beliefs and theories even when subsequent information suggests the need for revision. See *id.* at 591.

and the APA by effectively amending its *Interim Cap Order* rule on an ad hoc basis in the VZW-ALLTEL adjudicatory proceeding. An action that violated the APA cannot be enforced or administered by USAC.

III. THE APA AND DUE PROCESS REQUIRE A NOTICE-AND-COMMENT RULEMAKING TO FURTHER REDUCE CETC HIGH-COST SUPPORT

The Commission imposed the interim cap in April 2008 to “halt the rapid growth of high-cost support,” not to reduce the level of such funding. *Interim Cap Order*, 23 FCC Rcd at 8837. Thus, the interim cap “only applies to the amount of support available to [CETCs].” *Id.* at 8850. Under the *Interim Cap Order* rule, the amount of CETC high-cost support that is available in each state is capped at the total amount of support that all CETCs “were *eligible* to receive in that state during March 2008, on an annualized basis.” *Interim Cap Order*, 23 FCC Rcd at 8838 (emphasis added). The Commission clearly intended that the amount of CETC high-cost support that would be available would be fixed at the then-current funding level without reduction.²⁵

It is significant that the Commission capped CETC support funding at the amount CETCs were eligible to receive during March 2008 on an annualized basis, instead of the amount of CETC support that was “actually distributed in each state.” *See id.* In its *Interim Cap Order*, the Commission claimed that the Act “does not ... require that all ETCs must receive support, but rather only that carriers meeting certain requirements be *eligible* for support.” *Id.* at 8847 (emphasis in original). When the *Interim Cap Order* rule was adopted, VZW and ALLTEL were eligible to receive CETC high-cost support. VZW/ALLTEL remains eligible for high-cost

²⁵ *See Interim Cap Order*, 23 FCC Rcd at 8850. The Commission emphasized that the interim cap on CETC support was “only an interim measure to slow the current explosion of high-cost universal support while [it] considers further reform.” *Id.* The Commission made its own commitment to issuing a final order on comprehensive reform measures “as quickly as feasible” after the comment cycle was to end on May 19, 2008. *See id.* at 8836, 8850. Because the interim cap was to be of short duration, the Commission intended that the amount of high-cost support available would remain at the same level so long as the cap remained in effect.

support today, and in fact receives such support. That VZW/ALLTEL agreed to “accept” a phase down of its support does not change the fact that it remains eligible under §§ 214(e) of the Act and its state CETC designations. *See VZW-ALLTEL*, 23 FCC Rcd at 17531.²⁶

Under the *Interim Cap Order* rule, USAC was to calculate the state reduction factor each quarter by dividing the fixed amount of high-cost support that is available by the total amount of high-cost support that all the CETCs in the state “would have received” under the existing per-line identical support rule. 23 FCC Rcd at 8846. Read in context, the phrase “would have received” is synonymous with “were eligible to receive.” Thus, USAC was to include the support that all CETCs in the state were eligible to receive, including VZW/ALLTEL and the new Commission-designated CETCs that had not been eligible in March 2008. *See Interim Cap Order*, 23 FCC Rcd at 8850.

When the *Interim Cap Order* rule was adopted, the Commission did not contemplate that any amount of CETC high-cost support funding would be “removed” or that any funds would be “free[d] up” to disburse to any CETC. *See infra* Ex. 3 at 1-2. Nor did it contemplate that the per-line high-cost support to any CETC in any state would be reduced unless the number of CETCs in the state increased. *See Interim Cap Order*, 23 FCC Rcd at 8850. However, if any portion of the amount of the high-cost that VZW/ALLTEL is eligible to receive under the uncapped identical support rule is excluded from the computation of the state reduction factor by USAC, the factor is increased and the high-cost support provided every CETC in the state is reduced. Such a reduction was neither intended by the Commission nor permitted by the *Interim Cap Order* rule.

²⁶ VZW’s attempt to reserve the right to receive CETC high-cost support under the successor mechanism to the interim cap evidences its belief that it remains eligible for support. *See VZW-ALLTEL*, 23 FCC Rcd at 17531.

Assuming that the imposition of the phase-down condition in *VZW-ALLTEL* was lawful, that licensing action could legally bind VZW/ALLTEL to accept less high-cost support than it was eligible to receive, but it did not establish a rule that would bind non-parties to the VZW-ALLTEL proceeding or deprive any other CETC of its right to receive the support to which it was entitled under the *Interim Cap Order* rule. A CETC cannot be deprived of an entitlement under a federal program without being afforded due process of law.²⁷ And the process that would be due a CETC would either be a notice-and-comment rulemaking under § 254(a) of the Act and § 533 of the APA or a suspension or disbarment proceeding under § 54.8(e) of the Rules.

Before it can reduce the amount of per-line high-cost support disbursed to CETCs beyond any reduction called for the *Interim Cap Order* rule, the Commission must conduct an APA rulemaking to amend its existing distribution rules to expressly provide for the further reduction and to authorize USAC to administer the reduction. Therefore, if it wishes to pursue that course of action, the Commission may do so in the context of its ongoing comprehensive reform rulemaking. Of course, a Commission decision to adopt such a rule change must be based on the

²⁷ See *Board of Regents v. Roth*, 408 U.S. 254, 262 (1970). Contrary to the Commission's assumption, the interim cap "undermine[d]" the investment decisions that CETCs made when they petitioned to be designated eligible to receive USF support in the provision of service to high-cost areas. See *Interim Cap Order*, 23 F.C.C.R. at 8850. Each had the entirely reasonable investment-backed expectation that it would receive the exact amount of USF support to which it was entitled under the Commission's high-cost program and its universal service rules. Some made highly-intensive rural buildout commitments, mandated by state commissions as a prerequisite for CETC designation, with the expectation that the Commission would abide by its universal service rules unless and until they are modified prospectively by notice-and-comment rulemakings. After the adoption of the *Interim Cap Order* rule, CETCs have the investment-backed expectation that they will receive the exact amount of high-cost support to which they are entitled under the *Interim Cap Order* rule. With such property interests at stake, CETCs have the due process right to be afforded notice and the opportunity to be heard before their support can be reduced beyond the reduction called for by the *Interim Cap Order* rule.

statutory universal service principles, *see* 47 U.S.C. § 254(b), and not be inconsistent with pro-competitive policies of the Telecommunications Act of 1996. *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 615 (5th Cir. 2000) (the Commission “must see that *both* universal service and local competition are realized”).

There is no evidence that the Commission considered the statutory principles, competitive neutrality, or local competition before it imposed its phase-down condition on VZW/ALLTEL. The Commission clearly must do so if it considers a second CETC-only funding reduction, because it will not be able to repeat the claim that the need to stabilize the USF should take priority temporarily over the principle of competitive neutrality. *See Interim Cap Order*, 23 FCC Rcd at 8845.

IV. **USAC’S DECISION TO REMOVE THE PHASED-DOWN VZW/ALLTEL SUPPORT FROM THE CETC CAP AMOUNT VIOLATES THE STATUTORY REQUIREMENT THAT SUPPORT BE PREDICTABLE**

By reducing the amount of high-cost support that is available to CETCs in all of the states in which VZW/ALLTEL has been designated a CETC, USAC violated the *Interim Cap Order* rule and undermined the predictability of CETC high-cost support.

The imposition of the interim cap on CETC high-cost support was purportedly consistent with the statutory principle that the USF should be “specific, predictable, and sufficient ... to preserve and advance universal service.” 47 U.S.C. § 254(b)(5). The Commission determined that the interim cap would make CETC support “more predictable, in that it sets an upper, definitive bound on the amount of support available in a state.” *Interim Cap Order*, 23 FCC Rcd at 8841. However, it also claimed the “requirement of predictability requires only that the rules governing distribution, not the resulting funding amounts, must be predictable.” *Id.* Nevertheless, the Commission chose to use March 2008 as the base period for the cap to “ensure

that funding levels will not undermine the expectations underlying [CETC] investment decisions or result in immediate funding reductions.” *Id.* at 8850.

In December 2008, emphasizing the need to “provide certainty regarding the amount of high-cost support available to competitive ETCs under the cap in each state,” the Commission established a deadline of December 31, 2008 for CETCs to file any “corrections” to “the data on which their March 2008 high-cost support is based.”²⁸ The Commission also informed CETCs of the availability of March 2008 baseline cap data on USAC’s website.²⁹

USAC’s interpretation of the *VZW-ALLTEL* phase-down condition totally unhinges the cap from its mechanics under the *Interim Cap Order* rule. By excluding the “phase-down” amounts from the March 2008 cap baseline, USAC is effectively reducing the cap baseline amounts in several states below what CETCs were eligible to receive in March 2008. This (unlawful) action has the effect of reducing the flow of funds to individual states by as much as \$800,000 per month (which is the case in Kansas in the first year alone). Alabama and North Carolina will each lose approximately \$100,000 per month in the first year and approximately half a million dollars per month in the fifth year.

CETCs in these and other states similarly affected by the phase-down had a reasonable investment-backed expectation that the cap would operate in accordance with the *Interim Cap Order* rule. *See supra* note 38. In setting their capital budgets and planning their build-out activities, CETCs in the impacted states have relied on the Commission’s detailed explanation of the how the cap would operate. *See Interim Cap Order*, 23 FCC Rcd at 8846-50. As steep as many states’ cap reduction factors already were, CETCs in those states now must face still more

²⁸ *March 2008 Capped Universal Service High-Cost Support for CETCs*, DA 08-2684, 2008 WL 5169757, at *1 (Dec. 10, 2008).

²⁹ *See id.*

severe cuts in their support – and they must yet again make adjustments to their budgets and network build-out plans. Moreover, severe reductions threaten CETC commitments to state commissions and the FCC to offer and advertise service throughout their ETC service areas. Thus, the removal of the phase-down amounts out of the March 2008 cap baseline violates the statutory requirement that support to ETCs must be predictable.

V. CONCLUSION

For all of the reasons set forth above, RCA supports Corr's request for review. Considering that CETCs are being denied the high-cost support to which they are entitled under the *Interim Cap Order* rule, RCA respectfully requests that the Commission issue a final order granting Corr the relief it requests by June 9, 2009. *See* 47 C.F.R. § 54.724(b).

Respectfully submitted,

_____/s/
Russell D. Lukas
David A. LaFuria
Todd B. Lantor
Steven M. Chernoff

LUKAS, NACE, GUTIERREZ & SACHS, LLP
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
(703) 584-8678

Attorneys for Rural Cellular Association

May 11, 2009

EXHIBIT 1

John T. Scott, III
Vice President &
Deputy General Counsel
Regulatory Law



November 3, 2008

Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, DC 20005

Phone 202 589-3760
Fax 202 589-3750
john.scott@verizonwireless.com

Ex Parte

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Applications of Atlantis Holdings LLC and Celco Partnership
d/b/a Verizon Wireless for Transfer of Control, WT Docket No. 08-95**

Dear Ms. Dortch:

This letter responds to a question posed by the Commission in connection with the captioned license transfer proceeding.

As we have explained at length previously, the combination of Verizon Wireless and Alltel would produce significant public interest benefits. The transaction also has been the subject of an exhaustive review by the Department of Justice, which has approved the transaction subject to divestitures of overlapping properties in certain specific markets. Accordingly, the pending license transfer applications can and should be approved promptly.

Nevertheless, in order to provide still further comfort that the combination of Verizon Wireless and Alltel would serve the public interest, Verizon Wireless offers the following commitments:

First, Verizon Wireless commits to accept a phase down of the competitive eligible telecommunications carrier ("CETC") high cost support, for any properties which Verizon Wireless retains, over a five year period following closing of the transaction.

Specifically, Verizon Wireless commits to a five year transition during which Verizon Wireless's CETC high cost support would be phased out in equal increments. Support would be reduced 20 percent beginning 30 days following the closing of the transaction, or no later than December 31, 2008, whichever is earlier. If, however, the transaction does not close prior to December 31, 2008, support would be reduced 20 percent beginning the day after consummation. Support would be reduced in equal 20 percent increments annually thereafter, such that all CETC high cost support would be phased out five years after the the closing of the transaction. Our understanding is that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other CETCs. In the event that the Commission adopts

a different transition mechanism or a successor mechanism to the currently capped equal support rule in a rulemaking of general applicability, however, then that rule of general applicability would apply instead.

Second, Verizon Wireless commits to meet the improved wireless E911 location accuracy measures that it proposed jointly with the Association of Public-Safety Communications Officials, International (APCO) and the National Emergency Numbering Association (NENA) in a letter dated August 20, 2008 in PS Docket 07-114. The new compliance measurements set out there would apply two years and eight years following closing of the transaction respectively (rather than two years and eight years following their adoption as Commission rules as stated in the letter). Specifically, Verizon Wireless commits that:

- Two years after closing of the transaction, on a county-by-county basis, 67% of Phase II calls must be accurate to within 50 meters in all counties; 80% of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that Verizon Wireless may exclude up to 15% of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.
- Eight years after closing of the transaction, on a county-by-county basis, 67% of Phase II calls must be accurate to within 50 meters in all counties; 90% of Phase II calls must be accurate to within 150 meters in all counties, provided, however, that Verizon Wireless may exclude up to 15% of counties from the 150 meter requirement based upon heavy forestation that limits handset-based technology accuracy in those counties.

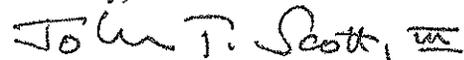
Third, Verizon Wireless will double, from two years to four, the duration of the commitment with respect to roaming rates that it made previously in this proceeding. Accordingly, Verizon Wireless will keep the rates set forth in Alltel's existing agreements with each regional, small and/or rural carrier for the full term of the agreement or for four years from the closing date, whichever occurs later.

The terms of these commitments do not apply to any properties that are to be divested, or to any properties as to which Verizon Wireless lacks control.

These commitments provide still further assurance that this transaction is in the public interest and the license transfers therefore should be promptly approved.

Pursuant to Section 1.1206, this letter is being filed electronically with your office. Should you have questions about this submission, please contact the undersigned.

Sincerely,



John T. Scott, III

EXHIBIT 2



Sprint Nextel
2001 Edmund Halley Drive
Reston, VA 20191
Office: (703) 433-4140
Fax: (703) 433-4142

Lawrence R. Krevor
Vice President,
Government Affairs - Spectrum

November 3, 2008

Written *Ex Parte* Communication

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W. Room TW-A325
Washington, DC 20554

RE: Sprint Nextel Corporation and Clearwire Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 08-94

Dear Ms. Dortch:

As a condition of its approval of the application filed by Sprint Nextel Corporation (Sprint Nextel) and Clearwire Corporation in the above-referenced proceeding (the Transaction), Sprint Nextel offers a voluntary condition concerning Universal Service Fund (USF) support.

Specifically, Sprint Nextel agrees to the following condition. At the end of a five-year transition, Sprint Nextel would not seek federal high-cost USF support for its wireless service unless such request is supported by an actual cost analysis or by whatever mechanism the Federal Communications Commission (Commission) may subsequently adopt pursuant to a general rulemaking. Effective upon thirty (30) days after the date of consummation of the Transaction, but no later than December 31, 2008, Sprint Nextel's total federal high-cost support funding would be reduced by 20%, and by an additional 20% per year for each of the subsequent four years. In the event that the Commission adopts a different transition mechanism or a successor mechanism to the current equal support rule under which support is currently capped, in a rulemaking of general applicability, however, then that rule of general applicability would apply instead.

Sprint Nextel remains committed to the provision of wireless services in the rural and high-cost areas in which it is a designated eligible telecommunications carrier, and it looks forward to working with the Commission to ensure that such services remain available to the millions of subscribers who live, work, and travel through such areas.

Page 2
November 3, 2008
Sprint Nextel Corporation

Pursuant to Section 1.1206(b) of the Commission's Rules, this written *ex parte* communication is being filed electronically at the request of the staff of the Commission. If you have any questions regarding this matter, please contact me.

Sincerely,

/s/ Lawrence R. Krevor

Lawrence R. Krevor
Vice President, Government Affairs

EXHIBIT 3



February 25, 2009

via U.S. Mail

Mr. Donald J. Evans
Fletcher, Heald & Hildreth, P.L.C
11th Floor, 1300 North 17th Street
Arlington, VA 22209

RE: Re-Distribution of Alltel USF Funds

Dear Mr. Evans:

I am writing in response to your recent letter to Scott Barash, Acting Chief Executive Officer of USAC, dated January 27, 2009, regarding the significant decrease in Corr Wireless Communications, LLC's (Corr Wireless') High Cost support and the potential impact of the Verizon Wireless and Alltel merger on High Cost support.

Corr Wireless' significant decrease in High Cost support is a direct result of the Competitive Eligible Telecommunications Carrier (CETC) interim cap. With the implementation of the interim CETC cap, all CETCs experienced a twenty-seven percent (27%) reduction in Interstate Access Support (IAS) because of the creation of separate IAS pools for incumbent and competitive carriers. In addition to the IAS reduction, all CETCs in the state of Alabama experienced an estimated fifty-seven percent (57%) reduction in High Cost support in the first quarter 2009. This reduction in support is due to newly designated CETCs filing for High Cost support that were not eligible to receive support as of the established date of the interim cap baseline, i.e. the March 2008 High Cost support payments annualized.

The *Verizon Wireless and Alltel Merger Order*¹ includes no provisions for the redistribution of support to other CETCs. In fact, the *Order* specifically states that the reduction in payments to Verizon Wireless and Alltel will not result in an increase in High Cost Support payments to other CETCs.² All Verizon Wireless and Alltel High Cost support payments subject to the reduction provisions included in the *Verizon*

¹ See *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings, LLC, For Consent to Transfer Control of Licenses, Authorization, and Spectrum manager and De Facto Transfer Leasing Arrangements, and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, (Verizon Wireless an Alltel Merger Order)* FCC 08-258, (rel. November 10, 2008).

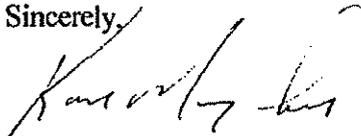
² See *Verizon Wireless and Alltel Merger Order* FCC 08-258, (rel. November 10, 2008), para. 196.

Mr. Donald J. Evans
February 25, 2009
Page 2 of 2

Wireless and Alltel Merger Order are effectively removed from the CETC interim cap and do not "free up" additional dollars for other CETCs in any jurisdiction.

If you have any additional questions, please feel free to contact me or someone on my High Cost staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Majcher". The signature is written in a cursive style with a large initial "K" and a long horizontal stroke at the end.

Karen Majcher
Vice President
High Cost and Low Income Division

cc: Scott Barash

EXHIBIT 4

BY-LAWS
OF
UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
(a Delaware corporation)

ARTICLE I
STOCKHOLDER

1. **STOCKHOLDER.** The National Exchange Carrier Association, Inc. (“NECA”) shall be the sole stockholder of the Corporation and shall act in compliance with the Federal Communications Commission’s (“FCC” or “Commission”) Rules and Orders when exercising its stockholder duties and powers.

2. **CERTIFICATES REPRESENTING STOCK.** Certificates representing stock in the Corporation shall be signed by, or in the name of, the Corporation (i) by the Chairperson or Vice-Chairperson of the Board of Directors, if any, or by the Chief Executive Officer or a Vice President and (ii) by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation. Any or all the signatures on any such certificate may be a facsimile. In case any officer, transfer agent, or registrar, who has signed or whose facsimile signature has been placed upon a certificate, shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent, or registrar at the date of issue.

Whenever the Corporation shall be authorized to issue more than one class of stock or more than one series of any class of stock, the certificates representing shares of any such class or series, shall set forth thereon the statements prescribed by the Delaware General Corporation Law. Any restrictions on the transfer or registration of transfer of any shares of stock of any class or series shall be noted conspicuously on the certificate representing such shares.

The Corporation may issue a new certificate of stock in place of any certificate theretofore issued by it and alleged to have been lost, stolen, or destroyed, and the Board of Directors may require the owner of the lost, stolen, or destroyed certificate, or such owner’s legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

3. **STOCK TRANSFER.** Upon compliance with provisions restricting the transfer or registration of transfer of shares of stock, if any, transfers or registration of transfers of shares of stock of the Corporation shall be made only on the stock ledger of the Corporation by the registered holder thereof, or by his or her attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation or with a transfer agent or a

registrar, if any, and on surrender of the certificate or certificates for such shares of stock properly endorsed and payment of all taxes due thereon.

4. MEANING OF CERTAIN TERMS. As used herein in respect of the right to notice of a meeting of the stockholder or a waiver thereof or to participate or vote thereat or to consent or dissent in writing in lieu of a meeting, as the case may be, the term “share” or “shares” or “share of stock” or “shares of stock” refers to an outstanding share or shares of stock.

PROXY REPRESENTATION. The stockholder may authorize another person or persons to act for him or her by proxy in all matters in which a stockholder is entitled to participate, whether by waiving notice of any meeting, voting or participating at a meeting, or expressing consent or dissent without a meeting. Every proxy must be signed by the stockholder or by his or her attorney-in-fact. No proxy shall be voted or acted upon after three years from its date unless such proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and, if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally.

VOTING. Subject to the FCC’s Orders^{1/} and Rules^{2/} each share of stock shall entitle the holder thereof to one vote. Subject to the FCC’s Orders and Rules with regard to the appointment of directors, directors shall be elected by a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Any other action shall be in compliance with FCC Rules and FCC Orders and shall be authorized by a majority of the votes cast except (i) where the Delaware General Corporation Law prescribes a different percentage of votes and/or a different exercise of voting power, or (ii) as may be otherwise prescribed by the provisions of the Corporation’s certificate of incorporation and these By-Laws. In the election of directors, or for any other action, voting need not be by ballot.

5. STOCKHOLDER ACTION WITHOUT MEETING. Any action required by the Delaware General Corporation Law to be taken at any annual or special meeting of the stockholder, or any action which may be taken at any annual or special meeting of the stockholder, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by the holder of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and such action shall be in compliance with FCC Rules and Orders. Prompt notice of the taking of the corporate action without a meeting by less than a unanimous written consent shall be

^{1/} Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, Report and Order and Second Order on Reconsideration, CC Docket Nos. 97-21 and 96-45, FCC 97-253, 12 FCC Rcd 18400 (1997); Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, Third Report and Order and Fourth Order on Reconsideration and Eighth Order on Reconsideration, CC Docket Nos. 97-21 and 96-45, FCC 98-306, released on November 20, 1998 (collectively, “FCC Orders”).

^{2/} 47 C.F.R. §§ 54.701 through 54.717 (“FCC Rules”).

given to the stockholder who has not consented in writing. Action taken pursuant to this paragraph shall be subject to the provisions of Section 228 of the Delaware General Corporation Law and in compliance with FCC Rules and Orders.

ARTICLE II DIRECTORS

1. FUNCTIONS AND DEFINITION. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation. Pursuant to 47 C.F.R. § 54.703(f), no member of the Board of Directors shall receive compensation for his or her service on the Board but each such member shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the USAC Board. Consistent with 47 C.F.R. § 54.702(c), the Board will not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress, and will seek guidance from the Commission where the Act or rules are unclear. In accordance with 47 C.F.R. § 54.705, the Board shall make the necessary selection of service provider, at-large, incumbent local exchange carrier, and interexchange carrier representatives for the Schools and Libraries Committee, the Rural Health Care Committee, and the High Cost and Low Income Committee. The use of the phrase “whole board” as used in these By-Laws refers to the total number of directors that the Corporation would have if there were no vacancies.

2. QUALIFICATIONS AND NUMBER. The qualifications and number of directors shall be determined in accordance with FCC Rule 47 C.F.R. § 54.701. The number of directors may be increased or decreased by the stockholder at the direction of the Commission. Upon adoption of these By-Laws, the Board of Directors shall consist of nineteen persons in the following composition: (i) Three directors shall represent incumbent local exchange carriers (“ILECs”), with one director representing the Bell Operating Companies and GTE, one director representing other ILECs with annual operating revenues in excess of \$40 million, and one director representing ILECs with annual operating revenues of \$40 million or less; (ii) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less; (iii) One director shall represent commercial mobile radio service (“CMRS”) providers; (iv) One director shall represent competitive local exchange carriers (“CLECs”); (v) One director shall represent cable operators; (vi) One director shall represent information service providers; (vii) Three directors shall represent schools that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (viii) One director shall represent libraries that are eligible to receive discounts pursuant to 47 C.F.R. § 54.501; (ix) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to 47 C.F.R. § 54.601; (x) One director shall represent low-income consumers; (xi) One director shall represent state telecommunications regulators; (xii) One director shall represent state consumer advocates; (xiii) One director shall be the Corporation’s Chief Executive Officer. A director shall cease to be a director of the Corporation and shall be subject to removal by the stockholder with the prior written approval of the Chairperson of the FCC if such director (a) changes his or her affiliation (as defined in this Section 2) with the entity that made him or her eligible for membership on the Board, and (b) upon such change is not affiliated with the entity or constituency that nominated him or her.

3. TERM. Any director may resign at any time upon written notice to the Corporation. The terms of the directors who initially will serve upon adoption of these By-Laws shall be staggered with the term of six members expiring on October 1, 2000, those of another six members will expire on October 1, 2001, and those of the remaining six members will expire on October 1, 2002 (the "Initial Terms"). The USAC Board shall determine when the initial terms of particular directors will expire. The USAC Board will maintain continuity by providing that the first set of Board members whose terms will expire will be representative of industry and non-industry groups with multiple representatives on the Board. Otherwise, unless a director is removed or resigns, he or she will serve a term of three years pursuant to 47 C.F.R. § 54.703(d); provided, however, that the Chief Executive Officer shall hold office as a director so long as he or she holds the office of Chief Executive. A director whose term has expired, if otherwise qualified to serve on the Board of Directors, shall continue to serve on the Board of Directors until such time as that director's replacement is selected pursuant to 47 C.F.R. § 54.703(c).

4. NOMINATION AND ELECTION OF BOARD MEMBERS. Nomination and selection of the Board (except for the Chief Executive Officer) shall be conducted and annual elections of successors to members whose terms are expiring shall be held pursuant to 47 C.F.R. § 54.703(c). Upon selection of the new director(s) by the FCC Chairperson, the Board will elect such director(s). In accordance with 47 C.F.R. § 54.703(d), if a Board member (other than the Chief Executive Officer) vacates his or her seat prior to the completion of his or her term, the Board will notify the FCC Common Carrier Bureau Chief of such vacancy, and a successor will be chosen to serve the remaining term of the vacating director in accordance with the nomination and selection process in 47 C.F.R. § 54.703(c). The member selected by the FCC Chairperson to fill the vacated Board seat will be elected by the Board members.

5. REAPPOINTMENT OF INCUMBENT BOARD MEMBERS. There shall be no limitation on additional terms for Board members. At the end of his or her term, an incumbent may be re-elected pursuant to the process outlined in Section 4 above and pursuant to 47 C.F.R. § 54.703(c).

6. MEETINGS.

TIME. Meetings shall be held at such time as the Board shall fix. Special meetings of the Board may be called pursuant to these By-Laws. Special meetings of the Board of Directors shall be held at such time as fixed by Chairperson of the Board or Secretary, not more than fifteen (15) days after receipt of a request made in compliance with these By-Laws.

PLACE. Pursuant to 47 C.F.R. § 54.703(e), all meetings of the Board shall be open to the public and held in Washington, D.C.; provided, however that actions involving proprietary or confidential information may be taken at meetings held in private.

CALL. No call shall be required for regular meetings for which the time and place have been fixed. Special meetings may be called by or at the request of the Chairperson of the Board, if any, the Vice-Chairperson of the Board, if any, the Chief Executive Officer, or of three of the directors in office.

NOTICE OR ACTUAL OR CONSTRUCTIVE WAIVER. No notice shall be required for regular meetings for which the time and place have been fixed. Written, oral, or any other mode of notice of the time and place shall be given for special meetings in sufficient time

for the convenient assembly of the directors there at. When an action taken by a committee will be discussed at a special meeting, notice to committee members shall be required in sufficient time for the convenient assembly of the directors there at. Notice need not be given to any director or to any member of a committee of directors who submits a written waiver of notice signed by him before or after the time stated therein. Attendance of any such person at a meeting shall constitute a waiver of notice of such meeting, except when he or she attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors need be specified in any written waiver of notice.

QUORUM AND ACTION. A majority of the whole Board shall constitute a quorum except when a vacancy or vacancies prevents such majority, whereupon a majority of the directors in office shall constitute a quorum, provided, that such majority shall constitute at least one-third of the whole Board. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting to another time and place. Except as herein otherwise provided, and except as otherwise provided by the Delaware General Corporation Law, the vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. The quorum and voting provisions herein stated shall not be construed as conflicting with any provisions of the General Corporation Law and these By-Laws that govern a meeting of directors held to fill vacancies and newly created directorships in the Board or action of disinterested directors.

Any member or members of the Board of Directors or of any committee designated by the Board, may participate in a meeting of the Board, or any such committee, as the case may be, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other.

CHAIRPERSON OF THE MEETING. The Chairperson of the Board, if any and if present and acting, shall preside at all meetings. Otherwise, the Vice-Chairperson of the Board, if any and if present and acting, or the Chief Executive Officer, if present and acting, or any other director chosen by the Board, shall preside.

MINUTES OF THE MEETING. All actions taken at Board meetings, including open sessions to the public, conference call meetings and closed executive sessions where proprietary matters are discussed and reviewed, shall be recorded by the Secretary of the Corporation in written minutes. These written minutes shall be made available to the public within three weeks after the meeting has been conducted and no later than one week prior to the next Board meeting. Actions that involve proprietary information shall be summarized in sufficient detail to inform the public of the action taken but without infringing on any privacy rights.

7. REMOVAL OF DIRECTORS. As provided by the Delaware General Corporation Law, any director or the entire Board of Directors may be removed, with or without cause. Removal may only occur upon the affirmative vote of the stockholder or the majority of Board members that are not facing removal, and upon the prior written approval of the FCC Chairperson. Upon the removal of one or more directors, the FCC Common Carrier Bureau Chief will initiate a nomination and selection process in accordance with 47 C.F.R. § 54.703(c) to replace the director(s) removed. Upon selection of the new director(s) by the FCC

Chairperson, the Board will elect such director(s), who shall serve the remaining term of the removed director(s).

8. COMMITTEES.

HIGH COST AND LOW INCOME COMMITTEE.

AUTHORITY. By order of the Federal Communications Commission and 47 C.F.R. § 54.705(c), the Board shall appoint a High Cost and Low Income Committee, which shall have the power and authority to act on behalf of the Corporation [unless: (i) the Committee's action is with respect to Board approval of a budget or such action is presented by the Chief Executive Officer to the Board for review, and (ii) the Board disapproves such action by a two-thirds vote of a quorum of the Board] on issues relating to programmatic aspects of the high cost, low-income, and interstate access support mechanisms, and on issues relating to any other duties assigned to the Committee by the Federal Communications Commission. These powers include the authority to make decisions concerning: (i) how the Administrator projects demand for the high cost, low-income, and interstate access support mechanisms; (ii) development of applications and associated instructions as needed for the high cost, low-income, and interstate access support mechanisms; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) performance of audits of beneficiaries under the high cost, low-income, and interstate access support mechanisms; (v) review of staff decisions pursuant to 47 C.F.R. § 54.719(a); and (vi) development and implementation of other functions unique to the high cost, low-income, and interstate access support mechanisms; as well as the setting of high cost, low-income, and interstate access support that USAC will disburse to eligible telecommunications carriers. These powers also include the authority to make decisions concerning items (i) through (vi) above relating to any other duties assigned to the Committee by the Federal Communications Commission. The budgets prepared by the High Cost & Low Income Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budget prepared by the Committee unless such modification is approved by a two-thirds vote of a quorum of the Board. The High Cost and Low Income Committee does not have the power to act on behalf of the Corporation on issues related to USAC's billing, collection and disbursement functions. The Board shall not have the power to remove the Committee or to materially modify the power and authority of the Committee, without FCC approval.

COMPOSITION AND VOTING. Pursuant to 47 C.F.R. § 54.705(c)(2), the Committee will consist of nine (9) USAC Board members, including two ILEC representatives (one shall represent rural telephone companies, as that term is defined in 47 U.S.C. § 153(37) and one shall represent non-rural telephone companies), one interexchange carrier representative, one wireless representative, one CLEC representative, one low income representative, one state consumer advocate representative, one state telecommunications regulator representative and USAC's Chief Executive Officer.

MEETINGS. The High Cost and Low Income Committee meetings shall be open to the public and shall be held in Washington, D.C.

RURAL HEALTH CARE COMMITTEE.

AUTHORITY. By order of the Federal Communications Commission and 47 C.F.R. § 54.705(b), the Board shall appoint a Rural Health Care Committee, which shall have

the power and authority to act on behalf of the Corporation (unless: (i) the Committee's action is with respect to Board approval of a budget or the action is presented by the Chief Executive Officer to the Board for review, and (ii) the Board disapproves such action by a two-thirds vote of a quorum of the Board) on issues relating to programmatic aspects of the rural health care support mechanisms. These powers include the authority to make decisions concerning: (i) how the Administrator projects demand for the rural health care support mechanism; (ii) development of applications and associated instructions as needed for the rural health care support mechanism; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) calculation of support levels under § 54.609; (v) performance of outreach and education functions; (vi) review of bills for services that are submitted by rural health care providers; (vii) monitoring demand for the purpose of determining when the \$400 million cap has been reached; (viii) performance of audits of beneficiaries under the rural health care support mechanism; (ix) review of staff decisions pursuant to 47 C.F.R. § 54.719(a); and (x) development and implementation of other functions unique to the rural health care support mechanism. The budgets prepared by the Rural Health Care Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budget prepared by the Committee unless such modification is approved by a two-thirds vote of a quorum of the Board. The Rural Health Care Committee does not have the power to act on behalf of the Corporation in matters related to USAC's billing, collection and disbursement functions. The Board shall not have the power to remove the Committee or to materially modify the Committee's power and authority, without FCC approval.

COMPOSITION AND VOTING. Pursuant to 47 C.F.R. § 54.705, the Committee will consist of eight (8) USAC Board members, including two rural health care provider representatives, one service provider representative, two at-large representatives elected by the Board, one state telecommunications regulator, one state consumer advocate, and USAC's Chief Executive Officer.

MEETINGS. The Rural Health Care Committee meetings shall be open to the public and shall be held in Washington, D.C.

SCHOOLS AND LIBRARIES COMMITTEE.

AUTHORITY. By order of the Federal Communications Commission and 47 C.F.R. § 54.705(a), the Board shall appoint a Schools and Libraries Committee, which shall have the power and authority to act on behalf of the Corporation (unless: (i) the Committee's action is with respect to approval of a budget or the action is presented by the Chief Executive Officer to the Board for review, and (ii) the Board disapproves such action by a two-thirds vote of a quorum of the Board) on issues relating to programmatic aspects of the schools and libraries support mechanisms. These powers include the authority to make decisions concerning: (i) how the Administrator projects demand for the schools and libraries support mechanism; (ii) development of applications and associated instructions as needed for the schools and libraries support mechanism; (iii) administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations; (iv) performance of outreach and education functions; (v) review of bills for services that are submitted by schools and libraries; (vi) monitoring demand for the purpose of determining when the \$2 billion trigger has been reached; (vii) implementation of the rules of priority in accordance with § 54.507(g) of this chapter; (viii) review and certification of technology plans when a state agency has indicated

that it will not be able to review such plans within a reasonable time; (ix) the classification of schools and libraries as urban or rural and the use of the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services purchased by eligible schools and libraries; (x) performance of audits of beneficiaries under the schools and libraries support mechanism; (xi) review of staff decisions pursuant to 47 C.F.R. § 54.719(a); and (xii) development and implementation of other functions unique to the schools and libraries support mechanism. The budgets prepared by Schools and Libraries Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budget prepared by the Committees unless such modification is approved by a two-thirds vote of a quorum of the Board. The Schools and Libraries Committee does not have the power or authority to act on behalf of the Corporation in matters related to USAC's billing, collection, and disbursement functions. The Board shall not have the power or authority to remove the Committee or to materially modify the Committee's power and authority, without FCC approval.

COMPOSITION AND VOTING. Pursuant to 47 C.F.R. § 54.705(a)(2), the Committee will consist of seven (7) members of USAC's Board of Directors, including three school representatives, one library representative, one service provider representative, one at-large representative elected by the Board, and USAC's Chief Executive Officer.

MEETINGS. The Schools and Libraries Committee meetings shall be open to the public and shall be held in Washington, D.C.

GENERAL.

OTHER COMMITTEES. The Board of Directors may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each such committee and member thereof shall serve at the pleasure of the Board. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of any such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation with the exception of any authority the delegation of which is prohibited by Section 141 of the Delaware General Corporation Law, and may authorize the seal of the Corporation to be affixed to all papers which may require it.

SUBCOMMITTEES. Each committee, through a resolution, may establish subcommittees and determine the composition thereof. A subcommittee shall have, only, such of the committee's authority as is delegated to it by the committee.

REPORTS. All committees and subcommittees shall keep books of separate minutes. All committees shall report all their actions at every regular meeting of the Board of Directors, or as often as may be directed by the Board. All subcommittees shall report all their actions to the committee which appointed them, at every regular meeting of that committee, or as often as may be directed by that committee.

9. WRITTEN ACTION. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee. These minutes shall be made available to the public in accordance with Article II, Section 6 of these By-Laws.

ARTICLE III OFFICERS

The officers of the Corporation shall consist of a Chief Executive Officer (who upon selection shall become a director), a Secretary, a Treasurer, and, if deemed necessary, expedient, or desirable by the Board of Directors, a Chairperson of the Board, a Vice-Chairperson of the Board, an Executive Vice-President, one or more other Vice-Presidents, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers with such titles as the resolution of the Board of Directors choosing them shall designate. Except as may otherwise be provided in the resolution of the Board of Directors choosing him or her, no officer other than the Chairperson or Vice-Chairperson of the Board, if any, need be a director at the time the Board of Directors chooses him or her as an officer. Any number of offices may be held by the same person, as the directors may determine.

Unless otherwise provided in the resolution choosing him or her, each officer shall be chosen for a one calendar year term and until his or her successor shall have been chosen and qualified. Elections of officers shall be the first order of business in the first Board of Directors meeting at the beginning of the calendar year.

All officers of the Corporation shall have such authority and perform such duties in the management and operation of the Corporation as shall be prescribed in the resolutions of the Board of Directors designating and choosing such officers and prescribing their authority and duties, and shall have such additional authority and duties as are incident to their office except to the extent that such resolutions may be inconsistent therewith. The Secretary or an Assistant Secretary of the Corporation shall record all of the proceedings of all meetings and actions in writing of the stockholder, directors, and committees of directors, and shall exercise such additional authority and perform such additional duties as the Board shall assign to him or her. Any officer may be removed, with or without cause, by the Board of Directors. Any vacancy in any office may be filled by the Board of Directors.

ARTICLE IV CORPORATE SEAL

The corporate seal shall be in such form as the Board of Directors shall prescribe.

ARTICLE V FISCAL YEAR

The fiscal year of the Corporation shall begin on the first day of January in each year and end on the last day of December in each year.

ARTICLE VI CONTROL OVER BY-LAWS

Subject to the provisions of the certificate of incorporation, the provisions of the Delaware General Corporation Law and FCC Rules and Orders, the power to amend, alter or repeal these By-Laws and to adopt new By-Laws may be exercised by the stockholder or the Board of Directors.

ARTICLE VII
GENERAL PROVISIONS

1. **CONTRACTS.** The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances and shall be in compliance with the FCC Orders and Rules.

2. **INDEMNIFICATION.** In accordance with Section 145 of the General Corporation Law of Delaware, the Corporation shall indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made for any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that a director, officer, employee or agent has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in the two paragraphs above (Section 145(a) and (b) of the General Corporation Law of Delaware), or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Any indemnification under subsections (a) and (b) of Section 145 of the General Corporation Law of Delaware (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in such subsections. Such determination shall be made (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) if there are no such directors or if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the stockholder.

Expenses (including attorneys' fees) incurred by a director, officer, employee or agent in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director, officer, employee or agent to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized by the General Corporation Law of Delaware. The indemnification and advancement of expenses provided by, or granted pursuant to, the General Corporation Law of Delaware shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any By-Law, agreement, vote of stockholder (in compliance with FCC Rules and Orders) or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under Section 145 of the General Corporation Law of Delaware.

The foregoing right of indemnification shall in no way be exclusive of any other rights of indemnification to which any such person may be entitled under any By-Law, agreement, vote of the Stockholder or disinterested directors or otherwise, and shall inure to the benefit of the heirs, executors and administrators of such person.

3. INSURANCE. The Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, to the full extent allowable under Section 145(g) of the Delaware General Corporation Law.

4. ADDITIONAL FCC REQUIREMENTS. The Corporation is subject to certain FCC audit, budget, record keeping, information sharing and nondisclosure requirements which are specifically described in the FCC Order and Rules.

5. MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS COMMISSION AND THE CORPORATION. The Federal Communications Commission (FCC) and the Corporation may from time to time have in effect a Memorandum of Understanding (MOU) governing the Corporation's administration of the Universal Service Fund and the universal service support mechanisms and the FCC's oversight thereof. During the period of time such MOU is in effect, the Corporation acknowledges the legal, binding effect of the MOU, and the terms of the MOU shall be made a part of the Corporation's policies, procedures and code of conduct, as appropriate.

ARTICLE VIII DISSOLUTION

Subject to compliance with the FCC Order and Rules and approval by the FCC Chairperson, if it should be deemed advisable in the judgment of the Board of Directors of the Corporation that the Corporation should be dissolved, the Board by a majority of the whole Board, at any meeting called for that purpose, shall adopt a resolution to dissolve the Corporation, shall cause notice of the adoption of said resolution and notice of a meeting of the stockholder to take action upon said resolution, to be mailed to the stockholder entitled to vote thereon pursuant to the provisions of the Delaware General Corporation Law.

Upon approval of said dissolution by the stockholder entitled to vote thereon, a certificate of dissolution shall be filed with the Secretary of State pursuant to and in accordance with the provisions of the Delaware General Corporation Law, and shall become effective in accordance with such law. Upon such certificate becoming effective in accordance with the Delaware General Corporation Law, the Corporation shall be dissolved.